

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of FOX MARTIN, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ORLANDO MARTIN,

Respondent-Appellant,

and

JULIE FRANCIS LAMBERTZ,

Respondent.

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In the Matter of FOX MARTIN, Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JULIE LAMBERTZ,

Respondent-Appellant,

and

ORLANDO DWAYNE MARTIN,

Respondent.

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Before: Cooper, P.J., and Murphy and Neff, JJ.

UNPUBLISHED

May 22, 2007

No. 273628

Macomb Circuit Court

Family Division

LC No. 2004-054381-NA

No. 273629

Macomb Circuit Court

Family Division

LC No. 2004-054381-NA

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights under MCL 712A.19b(3)(c)(i), (g), (j), and (l). We affirm. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

Respondents' parental rights to their three older children<sup>1</sup> were terminated on August 6, 2004, due largely to respondents' failure to improve the condition of their home after numerous services were offered to them. The trial court found that, after one and one-half years of services, the home was still uninhabitable. In November 2004, Fox was born and entered foster care immediately based on the termination of respondents' parental rights to their other children just months before, respondents' alleged substance abuse, and their failure to comply with their previous case service plans. Almost two years later, the trial court terminated respondents' parental rights to Fox.

Respondent father first argues that the trial court clearly erred in finding that petitioner established the statutory grounds for termination. The petitioner for the termination of parental rights has the burden of proving by clear and convincing evidence that at least one statutory ground for termination exists. MCL 712A.19b(3); *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). Our review of a court's decision that a ground for termination had been established and the decision concerning the child's best interests is under the clearly erroneous standard. MCR 3.977(J); *Trejo, supra* at 356-357. The trial court did not clearly err in finding that statutory grounds were established by clear and convincing evidence supporting termination of respondent father's parental rights. The conditions leading to adjudication were respondent father's loss of his parental rights to his other children due to environmental neglect and substance abuse, his extensive substance abuse history and criminal record, and his failure to comply with the treatment plan in the loss of his other children. In this matter, respondent father did not obtain a CARE assessment for substance abuse and did not submit to random drug screens as requested by petitioner and ordered by the court. He admitted that he was convicted of possession of marijuana in March 2006, that he went on a two-week drug binge in August 2005, and that, in drug screens submitted for probation, he tested positive for drugs in November and December 2005. Respondent father also did not allow petitioner to perform a court-ordered home visit, stating that he left the detail work up to respondent mother and that he wanted to be home when they came. Despite over ten attempts by the foster care worker to schedule a home visit, respondents did not allow her to visit the home at all. The need for a home visit was even more significant where, in the previous case, respondent parents could not maintain an appropriately clean home even after in-home services were provided. Finally, at trial both respondent parents testified that their current home was not appropriate for Fox because they lived with others.

The trial court did not clearly err in finding that the conditions leading to adjudication of substance abuse and lack of housing continued to exist at the time of trial and that respondent father failed to provide proper care and custody for Fox. Further, because these conditions

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<sup>1</sup> Respondent father was the natural father of only two of these children.

existed for nearly two years during the pendency of the case despite repeated admonishment at court hearings, the trial court did not clearly err in finding that the conditions could not be rectified within a reasonable time considering Fox's age, or that respondent father would be unable to provide proper care and custody within a reasonable time.

Respondent father argues, for the first time on appeal, that due process requires that petitioner not terminate his parental rights to Fox simply because his parental rights to other children were terminated. Because the trial court did not clearly err relative to findings under other statutory grounds for termination, and because only one ground need be established, it is unnecessary for us to address the due process argument that is tied solely to MCL 712A.19b(3)(l). Finally, the trial court did not clearly err in its best interests determination where respondent father made little progress in the nearly two years the case was pending. Although respondent father attended visitation faithfully, the foster care worker testified that the visits, while not inappropriate, were not interactive or reflective of a strong bond between Fox and respondent father. Fox had lived his whole life in foster care, and respondent father was still not ready for him to be returned. Therefore, the trial court did not clearly err in its best interests determination with regard to respondent father.

Respondent mother concedes that the statutory bases for termination were established. She argues instead that the trial court clearly erred in its best interests determination because petitioner did not provide support for her and failed to cooperate with her to provide services for reunification. Termination of parental rights is mandatory if the trial court finds that the petitioner established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interest. MCL 712A.19b(5); *Trejo, supra* at 344. Petitioner provided referrals for court-ordered services at the beginning of the case, and respondent mother was reminded at periodic court hearings of her lack of progress. While it does not appear that the foster care worker strived doggedly to get respondent mother to comply with services, respondent mother lacked initiative to follow through with the referrals. A review of the record of the previous termination proceedings, of which the trial court took judicial notice, establishes that petitioner provided numerous services to respondent mother, but she was not able to benefit from those services. Given the level of services provided to respondent mother in the previous case, her failure to benefit from those services, and respondent mother's lack of initiative in this matter, we cannot conclude that petitioner failed to provide the services necessary to reunite respondent mother with her child. Furthermore, although respondent mother consistently attended visits with Fox, the foster care worker testified that respondent mother did not bond with the child. Given the lack of a strong bond between respondent mother and Fox, the nearly two years the case was pending, and respondent mother's lack of progress in nearly two years, the trial court did not clearly err in finding that termination of respondent mother's parental rights was not contrary to Fox's best interests.

Affirmed.

/s/ Jessica R. Cooper  
/s/ William B. Murphy  
/s/ Janet T. Neff